

1 Well, we can then go look at the
2 actual price that Dish Network pays, and they
3 pay [REDACTED]. So he can't reliably predict
4 for the Dish Network what the actual price
5 they'd pay.

6 If you do this for all nine, four
7 out of nine times he has no statistical
8 confidence that he got it right. It's like
9 flipping a coin whether he is hitting it on
10 the head or not. So he hasn't reliably
11 predicted the price that is actually paid in
12 the market.

13 Q Do your results allow you to draw
14 any conclusions - withdraw.

15 Finally, Mr. Orszag, do you have
16 an opinion about the economic effect of
17 forcing Comcast to carry the NFL Network on an
18 expanded basis?

19 A I do. I have two conclusions.
20 One, we heard yesterday about the consumer
21 welfare effects that - or the effects on
22 consumers from Dr. Singer. But what he didn't

1 talk about was the fact that if the cost that
2 Comcast pays for NFL programming goes up, and
3 they are forced to carry it on expanded basic,
4 the price paid by consumers will go up. And
5 that is a significant issue. The commission
6 recently in their 2008 cable pricing report
7 found that of the increase of cable prices
8 that have been observed recently, 60 to 66
9 percent of them are due to increases in cable
10 programming payments from distributors such as
11 Comcast to programmers.

12 My second conclusion is that the
13 standard that Dr. Singer and the NFL proposed
14 in this case could lead to significant harms
15 to consumers in the long run, because cable
16 operators, vertically integrated cable
17 operators such as Comcast, would have a
18 weakened ability to defend themselves against
19 price increases and other carriage demands by
20 programmers.

21 MR. TOSCANO: Your Honor, we have
22 no further questions at this time.

1 JUDGE SIPPET: Okay. Cross-
2 examination will be in order.

3 MR. SCHMIDT: Thank you, sir.

4 CROSS-EXAMINATION BY COUNSEL FOR THE NFL

5 BY MR. SCHMIDT:

6 Q Mr. Orszag, you are a fan of the
7 NFL, right?

8 A Yes, I am.

9 Q You're a fan of the New England
10 Patriots, right?

11 A Yes, I am.

12 Q Even though you don't live in New
13 England?

14 A I grew up in New England.

15 Q Okay. You travel between
16 Washington and Los Angeles now, though?

17 A Yes, I do.

18 Q You are not unique in cheering for
19 a team from a market other than where you
20 live, are you?

21 A I do not think I am.

22 Q You know, don't you, that football

1 is an incredibly popular sport in America.

2 A Football is a popular sport in
3 America.

4 Q It is the most popular sport in
5 America, isn't it?

6 A It's not something I've studied,
7 but I'm not going to disagree with you.

8 Q You have no reason to disagree
9 with me, do you?

10 A No, I do not.

11 Q It's the most viewed sport on
12 television, isn't it?

13 A If you say so, I'll agree with
14 you.

15 Q Do you have any reason to
16 disagree?

17 A No, I do not.

18 Q In fact, NFL games, regularly rank
19 at the top of all programs, across the earth,
20 in terms of their popularity, don't they?

21 A I don't have any reason to
22 disagree with you about that.

1 Q Well, maybe you want a program
2 that is more popular than the Super Bowl, for
3 example?

4 A Well, Super Bowl is clearly the
5 top rated program every year, that's for sure.

6 Q And other football programs do
7 very well as well, don't they?

8 A I would agree with that.

9 Q Okay. You are familiar with the
10 sports network, ESPN, right?

11 A Yes, I am.

12 Q ESPN is one of the most successful
13 cable channels in the history of television,
14 right?

15 A I think that is a fair
16 proposition.

17 Q Are you aware that Brian Roberts,
18 the CEO of Comcast, has attributed ESPN's
19 success to its carriage of football?

20 A I am not aware of that.

21 Q Do you disagree with Mr. Roberts
22 on that point?

1 A I think they were successful
2 before they had football, but I - it's not
3 something I know.

4 Q Okay. So do you have a reason to
5 disagree with him that football drove its
6 success?

7 A I do not have a reason to disagree
8 with him.

9 Q And I think you mentioned this -
10 may I approach, Your Honor?

11 JUDGE SIPPEL: You may.

12 BY MR. SCHMIDT:

13 Q I think you mentioned this, but
14 your chart does not include ESPN, correct?

15 A Correct, I did mention that.

16 Q And that's because ESPN is so
17 expensive that it would be off the chart;
18 isn't that right?

19 A I said that.

20 Q I know you did. I want to give
21 you credit for that. But I just want to show
22 how far off the chart. It wouldn't be up

1 here, would it?

2 A No, it'd be probably on the second
3 floor of the building.

4 Q Okay, that's how expensive it is?

5 A Yes.

6 Q And [REDACTED]

7 [REDACTED] but that is
8 not correct, is it?

9 A Of the national cable sports
10 network that is the only one I'm aware of.

11 Q Are you aware of Fox Sports Net
12 News, FNS?

13 A I do not believe that was in the
14 Kagan data for that year, but let me check.
15 We have the data here.

16 MR. SCHMIDT: May I approach,
17 Your Honor?

18 JUDGE SIPPEL: You may.

19 MR. SCHMIDT: It's marked for
20 identification Comcast Exhibit 153.

21 (Whereupon the aforementioned
22 document was marked for

1 identification as Comcast Exhibit
2 No. 153.)

3 MR. SCHMIDT: If I may stand here
4 for just one moment, I'm looking at page 76 of
5 this exhibit.

6 JUDGE SIPPEL: And what's the
7 exhibit.

8 MR. SCHMIDT: It's Exhibit No.
9 153, Your Honor.

10 JUDGE SIPPEL: Page 76?

11 MR. SCHMIDT: Yes, Your Honor.

12 Are you looking at 76?

13 THE WITNESS: Yes, I'm just
14 looking at a different page, sir.

15 BY MR. SCHMIDT:

16 Q Well, I'd like to direct your
17 attention if I may to 76.

18 A Right.

19 Q And do you see FSA?

20 A Yes, I do.

21 Q On page 76?

22 A Yep.

1 Q Right below FSN?

2 A Yes, I do.

3 Q And for the record, how much is
4 ESPN?

5 A ESPN in 2007 is [REDACTED].

6 Q Okay, so that is the price that
7 would drive up onto the second floor?

8 A Yes.

9 Q Okay, what is the price in 2007
10 that we are looking at here for FSN?

11 A It's [REDACTED] but I'd like to know
12 some more information about FSN, because I'm
13 not sure if that is a combination of the
14 regional sports networks.

15 Q Okay, well, you can look at that
16 if you want. Have you researched that before?
17 Did you research that in preparing this table?

18 A I did not.

19 Q Okay. And would [REDACTED] also be on
20 the second floor, or would that stay on the
21 first floor here?

22 A That would be right about the

1 ceiling.

2 Q Okay. There's another channel, a
3 health channel, that would come in just below
4 the NFL Network; isn't that true?

5 A Yes.

6 Q Tell me where on your chart of the
7 NFL Network if you look up here on the board,
8 where on your chart would the NFL Network's
9 price be if we were talking about the price
10 the NFL Network is asking Comcast to pay in
11 this litigation?

12 A Where would that - it would be at
13 [REDACTED]

14 Q It would be right about here?

15 A I can't see it, sorry. You've
16 blocked me; [REDACTED].

17 Q About [REDACTED] of what
18 you've shown up here, right?

19 A That is correct.

20 Q And where would the price of the
21 NFL Network be if we were looking only at the
22 surcharge that Comcast agreed to pay for the

1 NFL Network? Would that be a - I'm sorry, I
2 misstated my question.

3 Where would the NFL Network be if
4 we were looking only at the base NFL Network?
5 Would that be a game surcharge, if Comcast
6 agreed to pay in 2004? Where would that be?

7 A It would be at roughly [REDACTED].

8 Q So it would be somewhere right
9 down here, right?

10 A That is correct.

11 Q And do you remember telling me in
12 your deposition that you had no reason to
13 question the amount that Comcast paid for that
14 base rate?

15 A I do not have a reason to question
16 that, no.

17 Q You don't now, do you?

18 A No, I do not.

19 MR. SCHMIDT: I'll take this
20 down. I'd like to keep a fresh one up, if I
21 may, Your Honor, with one other exhibit that
22 I'd like you to see before Mr. Orszag.

1 JUDGE SIPPEL: You certainly may.

2 MR. SCHMIDT: This has been
3 marked into evidence as Exhibit No. 177.

4 JUDGE SIPPEL: Whose exhibit,
5 yours?

6 MR. SCHMIDT: Ours, yes, sir.
7 Enterprise Exhibit No. 177.

8 (Whereupon the aforementioned
9 document was marked for
10 identification as Enterprises
11 Exhibit No. 177.)

12 BY MR. SCHMIDT:

13 Q Have you seen this exhibit before?

14 A I can't say that I have.

15 Q Are you familiar with the ESPN
16 Sports poll?

17 A I've seen it in other contexts.

18 Q Do you understand this to be the
19 ESPN sports poll?

20 A It looks like it is.

21 Q Okay, and I'll represent that that
22 is what in fact it is. What do you understand

1 the ESPN sports poll to measure?

2 A Well, I believe it's various polls
3 that ESPN does with regard to various kinds of
4 sports.

5 Q And what does this poll indicate
6 as to the number of Americans who identify
7 football as their favorite sport? Let's pick
8 a year, let's pick 2007 when the NFL Network
9 was tiered?

10 A I'm sorry, I don't have the actual
11 question that was asked here. So I'm not sure
12 what the question that they are asking
13 respondents. So I apologize, it just says,
14 favorite spectator sport times respondents.

15 Q Okay, let me ask you the same
16 question, which is, what is your favorite
17 spectator sport?

18 A What is my favorite spectator
19 sport?

20 Q No, let me ask you to assume
21 that's the question they are asking here, when
22 they say favorite spectator sport, that is the

1 question, what is your favorite spectator
2 sport.

3 What is the number in 2007 for the
4 NFL?

5 A 2007 for the NFL is 23.7 percent.

6 Q And tell me what sports are listed
7 higher than that?

8 A There are none.

9 Q Tell me what the number is for ice
10 hockey, the most popular programming on
11 Versus?

12 A Two point six percent.

13 Q Tell me what the number is for
14 golf, the overwhelming focus of the Golf
15 channel.

16 A Unfortunately, because I'm a big
17 fan of golf, it's 1.1 percent.

18 Q Okay. If you look at the back of
19 the table, and this I'll confess is a little
20 harder to read, I think it is page six of the
21 document. Are you with me?

22 A Is this what you would like me to

1 look at?

2 Q Yes, and then it actually carries
3 over onto page seven.

4 Do you see on the left hand side
5 it indicates fan, NFL, and that it states,
6 very interested, somewhat interested, a little
7 bit interested, or not at all interested?

8 A Yes, I do.

9 Q How many people if you can tell
10 from this chart in the year 2007 were very
11 interested in the NFL? How many Americans?

12 A I don't think that's what this
13 question is asking, I'm sorry.

14 Q Okay, what do you think this
15 question is asking?

16 A My gut tells me that this is
17 taking the 23 percent number that was on the
18 first page and asking only them, those
19 individuals, their interest level in the NFL.

20 Q So why did anyone who listed the
21 NFL as their favorite sport put not at all
22 interested?

1 A I don't know. I don't know the
2 question, I'm sorry. I can't see the
3 question, so I'm just looking at what's here.

4 Q Well, let me ask you to assume
5 it's a national survey of all fans.

6 A Okay.

7 Q And I don't want you to go on your
8 gut unless that is information you have. How
9 many people list themselves as being very
10 interested in the National Football League?

11 A I just want to pause, I'm sorry,
12 I'm not trying to be difficult. But is it
13 only of fans of the NFL that they are asking
14 this question? Or are they asking it of
15 everybody?

16 Q Do you understand that there are
17 any fans of the NFL that are not at all
18 interested in the NFL? It sounds like a
19 contradiction to me.

20 A In surveys people answer all kinds
21 of odd things. I just don't know, because I
22 am looking at the question. But I will

1 presume with you for the purposes of this to
2 answer that directly.

3 Q Okay, and what is the answer
4 directly?

5 A It's 34.8 percent are very
6 interested in the NFL.

7 Q Okay. How many are somewhat
8 interested?

9 A Twenty five percent.

10 Q And how many are a little bit
11 interested?

12 A Ten point six percent.

13 Q And if you add up those categories
14 of people who have some level of interest,
15 what is the number?

16 A Seventy one percent, give or take.

17 Q Do you have any reason to disagree
18 that that is the number of people in America
19 who have an interest in the NFL?

20 A I have no reason to disagree.

21 Q Let's talk about Comcast now.

22 Comcast is the largest MVPD in the country,

1 right?

2 A Yes, it is.

3 Q It's bigger than DIRECTV?

4 A Yes, it is.

5 Q Bigger than any other distributor?

6 A Yes, it is.

7 Q Let's take a look if we could at I
8 think it was Exhibit 604.

9 That wasn't marked, so never mind.

10 A In the interests of brevity I
11 think we excluded that.

12 Q I will do the same. Let me jump
13 ahead.

14 Comcast is recognized as a market
15 leader among cable companies; is that right?

16 A I have heard that stated from
17 others. It's not something I have analyzed as
18 an economist.

19 Q So as an economist do you have a
20 reason to reject that statement?

21 A I will accept it for the purposes
22 that you are asking me.

1 Q And you understand that Comcast is
2 very, very profitable, don't you?

3 A On an accounting basis?

4 Q Yes, have you studied that?

5 A Economists aren't big fans of
6 accounting profits. Economists like economic
7 profits, and they often don't match directly.

8 Q So have you studied Comcast's
9 profitability?

10 A No, I have not.

11 Q Let me show you an article, if I
12 may approach. It's what we've marked for
13 identification as NFL Enterprises Exhibit No.
14 221. It's a newspaper article.

15 (Whereupon the aforementioned
16 document was marked for
17 identification as Enterprises
18 Exhibit No. 221.)

19 BY MR. SCHMIDT:

20 Q And I'll ask if you have seen it
21 before, and then I'll ask you to read certain
22 information.

1 JUDGE SIPPEL: Well, go ahead.

2 This is identified. This is Enterprises

3 Exhibit 221. This has not been in the record

4 yet, has it?

5 MR. SCHMIDT: No.

6 JUDGE SIPPEL: It's identified

7 as, what is it, it's a Westlaw publication

8 page?

9 MR. SCHMIDT: It's not a Westlaw

10 publication. It's printed raw from Westlaw.

11 JUDGE SIPPEL: Thank you.

12 Identify what it is, then. You tell me what

13 it is?

14 MR. SCHMIDT: It's from a

15 publication called The Day, dated February

16 2nd, 2007. The title is, Comcast profits hit

17 record levels by someone named Anthony Cronin.

18 JUDGE SIPPEL: All right, we will

19 identify this for the record, identified as

20 Enterprises 221.

21 BY MR. SCHMIDT:

22 Q Have you seen this before, Mr.

1 Roszak?

2 A No, I have not.

3 Q Let me ask you to focus if you

4 would -

5 MR. TOSCANO: So you are moving?

6 Because I am going to object on the grounds

7 this is hearsay.

8 MR. SCHMIDT: Okay, I think there

9 have been a lot of articles like this that

10 have come in, Your Honor. So we would move

11 this into evidence.

12 JUDGE SIPPEL: For what purpose

13 are you offering it?

14 MR. SCHMIDT: Why don't I ask my

15 questions, and then maybe I can move after?

16 JUDGE SIPPEL: That would be

17 fine.

18 MR. SCHMIDT: Thank you, sir.

19 BY MR. SCHMIDT:

20 Q Let me focus your attention if I

21 may on the second paragraph.

22 A Sure.

1 Q Which states, Philadelphia based
2 Comcast said profits during the October
3 through December quarter rose to \$390 million.
4 Did I read that correctly?

5 A I believe you did.

6 Q Let's jump down to the one, two,
7 three, four, five, sixth paragraph, do you see
8 that, the one that begins Brian L. Roberts?

9 A Yes, I do.

10 Q Brian L. Roberts, Comcast's
11 chairman and chief executive officer, said
12 2006 proved simply to be our best year ever.
13 Did I read that correctly?

14 A I believe I did.

15 Q Did you know that Mr. Roberts had
16 made that statement?

17 A No, I did not.

18 Q Did you know that Comcast had
19 record profits in 2006?

20 MR. TOSCANO: Objection. There
21 seems to be a premise that this is true, and
22 it has not been accepted as substantive

1 evidence.

2 MR. SCHMIDT: Your Honor, I rely
3 on a quote from the chief executive officer.
4 Just to be clear, Your Honor, this has been
5 their case up until now is using exhibits like
6 this, using documents, and asking witnesses
7 about them. That's all I'm trying to do with
8 Mr. Orszag.

9 MR. TOSCANO: I'll withdraw the
10 objection.

11 JUDGE SIPPEL: Thank you.

12 MR. SCHMIDT: So is it in
13 evidence, Your Honor?

14 JUDGE SIPPEL: Are you moving it
15 in?

16 MR. SCHMIDT: Yes, sir.

17 JUDGE SIPPEL: And there is no
18 objection at this point, so we will receive it
19 in as Enterprises 221.

20 MR. SCHMIDT: Thank you.

21 (Whereupon the aforementioned
22 document having been previously

1 marked for identification as
2 Comcast Exhibit No. 221 was
3 received into evidence.)

4 BY MR. SCHMIDT:

5 Q You don't have any reason to
6 disagree that 2006 was the most profitable
7 year ever for Comcast, do you?

8 A It's not something I've analyzed,
9 so I have no reason to disagree.

10 Q Have you analyzed Comcast's
11 profits since 2006?

12 A No, I have not.

13 Q Tell the judge if you would when
14 Comcast was carrying the NFL Network and
15 paying the surcharge and getting the eight
16 games?

17 A In 2006.

18 Q Thank you.

19 Now I asked you if you will recall
20 in your deposition about how long Comcast
21 carried the eight-game package and paid the
22 surcharge to the NFL Network. And do you

1 recall telling me what period of time that
2 was?

3 A Yes, I do.

4 Q Ten to 12 months?

5 A Give or take; I think we weren't
6 sure precisely, but it was roughly 10 to 12
7 months.

8 Q And I'm fine with that range. And
9 I asked you at your deposition if you had done
10 any analysis of whether carriage of the NFL
11 Network during that time period with payment
12 of the surcharge for the eight games affected
13 Comcast's profitability. And do you remember
14 what your answer to that was?

15 A Same what it is now.

16 Q Which is?

17 A I have not conducted an analysis.

18 Q You have not looked at whether
19 when Comcast was paying the surcharge and
20 carrying the eight games it affected its
21 profitability?

22 A Precisely.